IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2368 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOODYEAR INDIA LTD.
Versus
A'BAD MUNICIPAL CORP. & ORS.

Appearance:
1. Special Civil Application No. 2368 of 1981
NOTICE SERVED for Petitioner No. 1
RULE SERVED for Respondent No. 1-3
M/S PATEL ADVOCATES for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 01/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. In instant petition, which is filed under Article 226 of the Constitution, the petitioner has prayed to issue a writ of certiorari or any other appropriate writ, order or direction declaring that definition of annual letting value in Section 2(1A) read with Section 2(54) and Rule 7 of Taxation Rules in Chapter VIII of Schedule A to the Bombay Provincial Municipal Corporations Act, 1949, is ultra vires the State Legislature and offending the provisions of Article 14 & Entry No.49 in the State List in VIIth Schedule to the Constitution of India. The petitioner has also prayed to quash the entries of gross rateable value made by the respondents in their assessment books for the official years 1978-79, 1979-80 and 1980-81 and the relevant appellate orders in respect of the premises bearing Survey No.4221, S.P.No.1-2/1 of Ward Shahpur II-B, Ahmedabad and also the bills, demand notices etc. issued in pursuance thereof. The petitioner has also prayed to direct the respondents to refund with interest to the petitioner such amount of tax as was illegally and excessively levied and collected by the respondents from the petitioners for the official years 1978-79, 1979-80 and 1980-81.

2. The petitioner, which is a public limited company, was represented by its learned lawyer, Mr.N.J.Modi, and on his sad demise, a notice was issued calling upon the petitioner to make necessary arrangements for its appearance either through an authorized officer or through a lawyer. Though the petitioner is duly served, the petitioner has neither appeared through its officer or a lawyer.

Having regard to the fact that the petition is very old, it is taken up for disposal on merits.

3. The constitutional validity of Section 2(1A) of the Bombay Provincial Municipal Corporations Act, 1949 ("the Act" for short) as amended by the Gujarat Act, 1970, has been upheld by the Supreme Court in Anat Mills Company Limited vs. State, 1975 G.L.R. 418 = A.I.R. 1975 SC 1234. From the averments made in the petition, it is evident that the petitioner, after negotiation with the landlord, had agreed to take a portion of ground floor of the disputed property admeasuring 10365 sq.ft. on a monthly rent of Rs.7773=00 with effect from December 4, 1972. For the official year 1978-79, the respondents assessed the aforesaid premises by fixing the gross

rateable value at Rs.1,27,711=00. The gross rateable value was worked out by adding the amount of property taxes at the rate of 39% to the basic agreed annual rent. The respondents thereafter served municipal tax bill No.4730 claiming Rs.44,826=60ps. on account of property tax and Rs.22,988=00 as education cess. Thereafter, demand notice was served on the petitioner. For the official year 1979-80 also, the gross rateable value fixed for the previous year was adopted and determined at Rs.1,27,711=00, and the petitioner was issued bill claiming Rs.44,826=60ps. on account of property tax and Rs.22,988=00 as education cess. For the official year 1980-81, the gross rateable value as determined for the previous year was adopted and fixed at Rs.1,27,711=00. The petitioner has claimed that determination of gross rateable value is contrary to the decision of the Supreme Court in Dewan Daulatrai Kapoor vs. Municipal Committee of Delhi, A.I.R.1980 SC 541. According to the petitioner, the assessment made by the Corporation on the basis of contractual rent, which is not fair/standard rent of the premises, is absolutely illegal, null and void. It is also claimed that the Municipal Commissioner is not justified in hearing and disposing of the complaint made against entry recorded in the assessment book in view of the principle that no one can be a judge in his own cause. What is claimed by the petitioner is that the property tax levied by the Corporation in respect of other premises is less than levied in respect of the property hired by the petitioner. It is also claimed that the provisions of Section 2(1A) of the Act is violative of Article 14 of the Constitution as it authorises concerned Authorities to discriminate between `owner-occupied premises' and `tenant-occupied premises' in the same building/locality, and apply arbitrary letting rates in respect of the premises similarly situated. Further, it is stated by the petitioner that power of the State Legislature to enact law for levy of property tax is not referable to any other entry in the State List or Concurrent List except Entry No.49 in the State List contained in VIIth Schedule to the Constitution, and authority conferred on the Corporations to add amount of taxes to annual letting value, which is not referable to Entry No.49 in the State List, is bad in law. Under the circumstances, the petitioner has filed instant petition and claimed reliefs to which reference is made earlier.

4. On service of notice, Mr.A.K.Jhaveri, Assessor & Collector, Ahmedabad Municipal Corporation, has filed affidavit-in-reply controverting the averments made in the petition.

5. In A.G.M., Central Bank of India vs. Ahmedabad Municipal Corporation, 1995 (2) G.L.R. 1189, the Supreme Court has considered the provisions of Sections 2(1A)(ii), 127 & 129 of the Act as well as Section 5(10) & (11) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947, and held that in cases covered by proviso (aa) to sub-clause (ii), the annual rent is the actual rent received and it would constitute the basis for determining the annual letting value. The contention that when the standard rent is not fixed, the Corporation must make efforts to ascertain the standard rent and adopt that as annual rent for determining annual letting value, has been negatived. There is nothing in the statutory provisions to suggest that the agreed rent willingly paid by a tenant to the landlord should be ignored. The object of Section 2(1A) of the Act is to find out the rent which a tenant might reasonably be expected to pay for a building. It is the expectation which is to be reasonable. Even Faraday on rating has also recognized the method of arriving at the annual value of the building by competitive or comparative method, i.e. by finding out rent actual paid for the building. In respect of the premises, which are let out, the measure of assessment is the income that the property would be able to fetch as provided under Section 2(1A) of the Act, which is not discriminatory at all because the measure of the assessment in respect of the premises occupied by oneself and the measure of assessment made in respect of the premises occupied by the tenant have to be different. The petitioner has failed to point out that the rent, which it has agreed to pay to the landlord, is excessive and, therefore, the method adopted by the Corporation for determining annual letting rate cannot be regarded as unreasonable, unjust, illegal or irrational. In view of the above discussion, the contention raised by the petitioner that the definition of `annual letting value' in Section 2(1A) of the Act read with Section 2(54) & Rules 7 of Taxation Rules in Chapter VIII of Schedule A to the Act is ultra vires, and offends the provisions of Article 14 of the Constitution cannot be accepted.

Further, the plea based on Entry No.49 in the State List contained in VIIth Schedule to the Constitution has also no merits as it includes within its scope the value arrived at by adding property tax itself. The contention that the amount of tax or other charges which a tenant is required to pay to Corporation or other body is absolutely foreign to the concept of `Tax on

Lands & Building' is not well founded. The plea that the amount of tax which a tenant pays directly to Municipal Authority is not part of value of building, has no merits nor addition of the amount of taxes can be regarded as extraneous to power to impose taxes. In the reply affidavit, it has been demonstrated convincingly as to how the rateable value of the property arrived at is just and reasonable.

6. For the foregoing reasons, the Court does not find any substance in the petition, and the petition is liable to be dismissed.

The petition is, therefore, dismissed. Rule is discharged. There shall be no order as to costs. Interim relief, if any, shall stand vacated.

(J.M. Panchal, J.)

(A.M. Kapadia, J.)

Rajendra